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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
)
Amendment of Section 73.202(b))
Table of Allotments)
FM Broadcast Stations)
(Humboldt and Pawnee City, Nebraska,)
and Valley Falls, Kansas))

MB Docket No. 05-310
RM-11292

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Federal Communications Commission
Office of Secretary

To: Office of the Secretary

Attn: Assistant Chief, Audio Division,
Media Bureau

COUNTERPROPOSAL

Viking Enterprises, LLC ("Viking"), licensee of FM station KMXN(FM), Osage City, Kansas, by its attorneys, hereby submits its Counterproposal in the above-referenced docket. Viking proposes to allot Channel 245C2 to Holton, Kansas, as that community's first local service, substitute Channel 272A for Channel 244A at Humboldt, Nebraska, and modify the construction permit for the unconstructed station at Humboldt, Nebraska (Facility ID No. 164159) accordingly. If this Counterproposal is granted, Viking intends to file an application for Channel 245C2 at Holton, Kansas, and construct the facilities as authorized. The following table summarizes the changes requested in this Counterproposal:

City	Channel	
	Existing	Proposed
Holton, Kansas	---	245C2
Humboldt, Nebraska	244A	272A

A. The Commission Should Favor Providing First Local Service to Holton. As demonstrated in the attached Engineering Report, this Counterproposal conflicts with both the

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List A B C D E

proposal put forward by Cumulus Licensing LLC (“Cumulus”) as described in the Notice of Proposed Rulemaking (the “Initial Proposal”) and the proposal put forward in the counterproposal that Cumulus subsequently submitted to the NPRM (the “Second Proposal”). In the Initial Proposal, Cumulus proposed to (1) substitute Channel 245C2 for Channel 244A at Humboldt, (2) reallocate Channel 245C2 to Valley Falls, Kansas, and (3) allot Channel 256A at Pawnee City, Nebraska. This proposal would provide a first local service at Valley Falls, which, per the 2000 U.S. Census, has a population of 1,254 persons, and a first local service at Pawnee City, which, per the 2000 U.S. Census, has a population of 1,033. The Initial Proposal also would remove a service from Humboldt (population 941 per the 2000 U.S. Census,) – although the Commission noted that the construction permit for Channel 244A at Humboldt is not constructed and therefore represented potential service rather than an existing service.¹

In the Second Proposal, Cumulus proposed to (1) substitute Channel 245C2 for Channel 244A at Humboldt, (2) reallocate Channel 245C2 to Effingham, Kansas, (3) allot Channel 272A at Humboldt, and (4) allot Channel 256A at Pawnee City.² Cumulus’ revised proposal would provide first local service at Effingham, which, per the 2000 U.S. Census, has a population of 588, as well as the first local service at Pawnee City (population 1,033). Unlike the Initial Proposal, the Second Proposal would retain service at Humboldt (population 941), albeit on Channel 272A.

Based on the FM Allotment priorities, the proposal put forward by this Counterproposal should be favored over the proposals in the Initial Proposal and the Second Proposal.³ The

¹ *Humboldt and Pawnee City, Nebraska and Valley Falls, Kansas, Notice of Proposed Rulemaking*, MB Docket No. 05-310, DA-05-2943 at ¶6 (rel. Nov. 10, 2005) (“NPRM”).

² See Public Notice, Report No. 2744 (rel. Nov. 25, 2005).

³ See *Revision of FM Assignment Policies and Procedures*, 90 FCC 2nd 88 (1988). The FM Allotment priorities are (1) first full-time aural service, (2) second full-time aural service, (3) first local service, and (4) other public interest matters (with co-equal weight is given to priorities (2) and (3)).

proposal set forth herein would provide a first local service to Holton, Kansas, which, per the 2000 U.S. Census, has a population of 3,353.

Because Viking's proposal, like the Initial Proposal and the Second Proposal, provides for first local service, all three proposals fall under Priority Three. As Cumulus itself noted, when mutually exclusive proposals are evaluated under Priority Three, the Commission favors the community with the largest population.⁴ In this case, Viking's proposal should be favored over the Initial Proposal because the population of Holton (3,353) is larger than the populations of Valley Falls (1,254) and Pawnee City (1,033) *combined*. Likewise, Viking's proposal should be favored over the Second Proposal because Holton is larger than Effingham (588) and Pawnee City *combined*. Moreover, as noted in the attached Engineering Statement, Viking's proposal would not conflict with the allotment of Channel 256A to Pawnee City.⁵ As a result, the Commission could approve this Counterproposal and still choose to allot Channel 256A to Pawnee City. In addition, unlike the Initial Proposal, Viking's proposal would not remove service from Humboldt.

B. The Proposed Allotment Complies with the Commission's Rules. As demonstrated in the attached Engineering Statement, Channel 245C2 can be allotted to Holton at the coordinates of 39-19-19 North Latitude, 95-39-21 West Longitude consistent with the Section 73.207 of the Commission's Rules with respect to all existing allotments and facilities, provided that Channel 272A is substituted for Channel 244A in Humboldt to eliminate any potential short spacing between Channel 245C2 at Holton and the unconstructed facility at Humboldt. In accordance with Commission policy, Viking hereby states that it shall reimburse

⁴ See NPRM at ¶ 3. See, e.g., *Ardmore, Alabama, et. al.*, 17 FCC Rcd 16332 (MB 2002), *Blanchard, Louisiana, et. al.*, 10 FCC Rcd 9828 (1995).

⁵ Engineering Statement of Carl E. Smith Consulting Engineers at n.3, attached hereto as Exhibit A.

the permittee of the station at Humboldt for reasonable costs associated with changing to Channel 272A, should it become the ultimate permittee of Channel 245C2 at Holton.⁶

A city grade signal can be provided to all of Holton from these proposed reference coordinates. In addition, the 1 mV/m contour for the proposed facility at Holton would encompass an area of 8560.3 square kilometers containing a population of 255,310 persons.⁷

C. Holton is Independent from Topeka. Although Holton clearly is distinct and independent from Topeka, Kansas, the attached Engineering Statement indicates that the proposed facility would cover 57.9 percent of the Topeka, Kansas, Urbanized Area with a 3.16 mV/m contour. A demonstration of Holton's independence from Topeka under the factors identified in *Faye and Richard Tuck* therefore is provided.⁸

In determining whether an urbanized community should be awarded a first local service preference, the Commission has specified the following three factors for evaluating a community's independence: (1) signal population coverage, *i.e.*, the degree to which the proposed station will provide service to both the suburban community and the larger metropolis; (2) the size and proximity of the suburban community relative to the metropolis; and (3) the interdependence of the suburban community with the metropolis.⁹ As noted above, the proposed facility at Holton would place a 3.16 mV/m contour over less than sixty percent of the Topeka, Kansas, Urbanized Area. Holton's population (3,353, per 2000 U.S. Census) is 2.7 percent of that of Topeka (122,377 per 2000 U.S. Census). Holton is 30 miles (48 kilometers) from Topeka and is located in a different county.¹⁰ These figures greatly exceed those in other

⁶ See *Circleville, Ohio*, 8 FCC 2d 159 (1967); *Clatskanie, Oregon*, 19 FCC Rcd 23598 (2004); *Levan, Utah*, 19 FCC Rcd 13103 (2004).

⁷ See Exhibit A.

⁸ *Faye and Richard Tuck*, 3 FCC Rcd 5374 (1988) ("Tuck").

⁹ *Id.* at ¶28.

¹⁰ See Exhibit B. Holton is Jackson County. Topeka is located in Shawnee County.

cases in which the Commission granted a first local preference.¹¹ Of the three factors described above, however, the most significant is the third.¹²

In assessing the interdependence of the specified community with the central city, the Commission considers the following characteristics: (1) the extent to which community residents work in the larger metropolitan area, rather than the specified community; (2) whether the smaller community has its own newspaper or other media that covers the community's local needs and interests; (3) whether community leaders and residents perceive the specified community as being an integral part of, or separate from, the larger metropolitan area; (4) whether the specified community has its own local government and elected officials; (5) whether the smaller community has its own telephone book provided by the local telephone company or zip code; (6) whether the community has its own commercial establishments, health facilities, and transportation systems; (7) the extent to which the specified community and the central city are part of the same advertising market; and (8) the extent to which the specified community relies on the larger metropolitan area for various municipal services such as police, fire protection, schools, and libraries.¹³ Each of these eight factors greatly favors finding Holton independent from Topeka.

1. Residents of Holton are not dependent on Topeka for employment opportunities. Dozens of businesses are located in Holton, including restaurants, banks, retail establishments, auto dealers, and a hospital.¹⁴ As there are several businesses and employers in Holton, there are more than sufficient opportunities for employment in the community to

¹¹ See, e.g., *Park City, Montana*, 19 FCC Rcd 2092, 2094 (2004) (Park City, Montana, had less than 1% of the population of Billings, Montana, and was located 21 miles from Billings); *Ada, Newcastle and Watonga, Oklahoma*, 11 FCC Rcd 16896, 16899 (1996) (Newcastle, Oklahoma, had less than 1% of the population of Oklahoma City, Oklahoma, and was located 15 miles from Oklahoma City).

¹² Tuck at ¶40.

¹³ *Id.* at ¶36.

¹⁴ See Exhibit C.

alleviate any concerns that Holton might be dependent on the urbanized area for employment of its residents.¹⁵

2. Holton has a daily newspaper and other media outlets. The Holton Recorder is a daily newspaper published in Holton that covers Holton's local needs and interests.¹⁶ In addition, there are a number of radio stations around Holton that are not licensed to Topeka that provide local information to the residents of Holton. As noted in the Engineering Statement, ten stations that are not licensed to Topeka provide service to Holton, including KFEQ(AM), St. Joseph, Missouri, KAIR-FM, Horton, Kansas, KQTP(FM), Saint Marys, Kansas, KNZA(FM), Hiawatha, Kansas, and KKJO-FM, Saint Joseph, Missouri.¹⁷

3. Community leaders and residents identify Holton as separate from Topeka. Holton is an historic community. It was first settled in between 1856 and 1857 with the founding of the State of Kansas. Soon afterward, Holton was selected as the county seat of Jackson County and was incorporated as a city in 1859. By 1860, the population of Holton had grown to nearly 2000.¹⁸ Holton's long history establishes it as a separate community from Topeka. The number of community organizations located in Holton, including the Friends of Downtown, the Holton Area Chamber of Commerce, the Lions Club of Holton, the Holton Rotary Club, and the Jackson County Historical Society, further confirms Holton's separate identity from Topeka.¹⁹ In addition, over twenty local businesses and organizations include Holton in their names.²⁰

¹⁵ See *Lebanon and Speedway, Indiana*, 17 FCC Rcd 25064, 25065 (2002).

¹⁶ See *The Holton Recorder Online*, <<http://holtonrecorder.com>>.

¹⁷ See Exhibit A.

¹⁸ See *City of Holton History*, <<http://www.holtonks.net/city/history.html>>, printout attached hereto at Exhibit D.

¹⁹ See Exhibit E.

²⁰ See Exhibit C.

4. Holton has its own local government and elected officials. Holton has a City Manager-Commission form of government with five Commissioners elected at large serving three year terms. The Mayor is one of the five Commissioners and is chosen by the Commissioners after the April election every year.²¹ In addition, Holton is served by several local governmental organizations, including the Holton Parks & Recreation Department, the Holton Street Department, the Holton Water & Wastewater Department, the Holton Planning, Zoning & Code Enforcement Department, and the Holton Police Department. Holton has its own school district, which operates Holton High School, Holton Middle School, and Central and Colorado Elementary Schools. Holton also owns its own electrical power plant and distribution facility, which is managed by the Holton Electric Distribution Department.²²

5. Holton has its own ZIP code and post office. The U.S. Postal Service has assigned ZIP Code 66436 to Holton and operates an office in Holton at 328 Pennsylvania Avenue.²³

6. Holton has its own commercial establishments and health facilities. As noted above, dozens of commercial establishments, including banks, retailers, and other businesses are located in Holton. Holton also is home to the Holton Community Hospital, which provides medical services and facilities to the surrounding area.²⁴

7. Holton has a distinct advertising market from Topeka. As noted above, Holton is served by its own daily newspaper, The Holton Recorder, and several local radio stations, which offer local businesses distinct local advertising opportunities apart from Topeka-based media outlets.

²¹ See *City of Holton Web Site*, <<http://www.holtonks.net/city/index.html>>, printout attached hereto at Exhibit D.

²² *Id.*

²³ See Exhibit F.

²⁴ See Exhibit C.

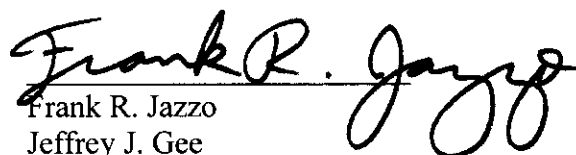
8. **Holton has its own police, fire protection, schools, and libraries.** As noted above, Holton operates its own police department and its own school district, which operates Holton High School, Holton Middle School, and Central and Colorado Elementary Schools. Holton also has its own fire department.²⁵ In addition, Holton is served by the Beck-Bookman Library, which was founded in Holton in 1897, by the all volunteer Bookman Club.²⁶

D. Conclusion. Grant of the instant Counterproposal would serve the public interest because it would provide new first local service to Holton, Kansas, and would provide a population of 255,340 with an additional aural service without any loss of existing service. Because the population of Holton is significantly greater than that of either Valley Falls or Effingham, the Commission should favor the provision of first local service to Holton over the provision of first local service to either Valley Falls or Effingham. Thus, Viking respectfully urges the Commission to grant this Counterproposal.

Respectfully submitted,

VIKING ENTERPRISES, LLC

By:


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Jeffrey J. Gee

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11th Floor
Arlington, Virginia 22209
(703) 812-0400

Its Attorneys

January 3, 2006

²⁵ *Id.*

²⁶ See Beck-Bookman Library – History, <<http://www.holtonks.net/library/history.htm>>, printout attached at Exhibit D.

Exhibit A

**ENGINEERING STATEMENT IN
SUPPORT OF COUNTERPROPOSAL**

MM DOCKET 05-310

**Viking Enterprises, LLC
Holton, KS**

December 30, 2005

**Prepared for: Mr. Jerry Zimmer
Viking Enterprises, LLC
P.O. Box 1628
Cape Girardeau, MO 63702**

CARL E. SMITH CONSULTING ENGINEERS

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Ronald W. Coffman

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Fig. 1.0 - Predicted Service Contours
Channel 245C2 - Holton, KS

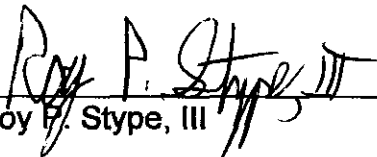
Table 1.3 - Stations Which Provide Aural Service Holton

ENGINEERING AFFIDAVIT

State of Ohio)
) ss:
County of Summit)


Roy P. Stype, III, being duly sworn, deposes and states that he is a graduate Electrical Engineer, a qualified and experienced Communications Consulting Engineer whose works are a matter of record with the Federal Communications Commission and that he is a member of the Firm of "Carl E. Smith Consulting Engineers" located at 2324 North Cleveland-Massillon Road in the Township of Bath, County of Summit, State of Ohio, and that the Firm has been retained by Viking Enterprises, LLC to prepare the attached "Engineering Statement In Support Of Counterproposal - MM Docket 05-310."

The deponent states that the Exhibit was prepared by him or under his direction and is true of his own knowledge, except as to statements made on information and belief and as to such statements, he believes them to be true.



Roy P. Stype, III

Subscribed and sworn to before me on **December 30, 2005.**



Notary Public

NANCY A. ADAMS, Notary Public
Residence - Cuyahoga County
State Wide Jurisdiction, Ohio
My Commission Expires Sept. 20, 2010

/SEAL/

ENGINEERING AFFIDAVIT

State of Ohio)
) ss:
County of Summit)

Ronald W. Coffman, being duly sworn, deposes and states that he is a qualified and experienced Communications Consulting Engineer whose works are a matter of record with the Federal Communications Commission and that he is a member of the Firm of "Carl E. Smith Consulting Engineers" located at 2324 North Cleveland-Massillon Road in the Township of Bath, County of Summit, State of Ohio, and that the Firm has been retained by Viking Enterprises, LLC to prepare the attached "Engineering Statement In Support Of Counterproposal - MM Docket 05-310."

The deponent states that the Exhibit was prepared by him or under his direction and is true of his own knowledge, except as to statements made on information and belief and as to such statements, he believes them to be true.



Ronald W. Coffman

Subscribed and sworn to before me on **December 30, 2005**.



Notary Public

/SEAL/

NANCY A. ADAMS, Notary Public
Residence - Cuyahoga County
State Wide Jurisdiction, Ohio
My Commission Expires Sept. 20, 2010

ENGINEERING STATEMENT

This engineering statement is prepared on behalf of Viking Enterprises, LLC. It supports a counterproposal in MM Docket 05-310, which proposes to substitute Channel 245C2 in Valley Falls, Kansas (population 1254¹) for Channel 244A in Humboldt, Nebraska and modify the construction permit (BNPH-20041230ADE) for a new station on Channel 244A in Humboldt to specify operation on Channel 245C2 in Valley Falls.² The *Notice of Proposed Rulemaking* in this proceeding also proposes to allot Channel 256A to Pawnee City, Nebraska as its first local service.³ The data contained in this engineering statement documents that Channel 245C2 can be allotted to Holton, Kansas (population 3353) as its first local service, rather than either Valley Falls or Effingham, so long as Channel 272A is substituted for Channel 244A in Humboldt..

The geographic reference coordinates for Holton are:

NL - 39° 27' 55"
WL - 95° 44' 10"

The studies contained in this exhibit were conducted from a site 17.4 kilometers south-southeast of Holton:

NL - 39° 19' 19"
WL - 95° 39' 21"

¹All population data in this engineering statement is extracted from the 2000 U. S. Census.

²The petitioner subsequently filed an amended rulemaking petition, which is being treated as a counterproposal in this proceeding, proposing to allot Channel 245C2 to Effingham, Kansas (population 588), rather than Valley Falls and modify the Humboldt construction permit to specify operation on Channel 245C2 in Effingham. This amended rulemaking petition also proposes to allot Channel 272A to Humboldt to replace Channel 244A as the community's only local service.

³The allotment proposal outlined in this engineering statement and the *Counterproposal* which it supports does not conflict in any way with the proposed allotment of Channel 256A to Pawnee City, Nebraska. As a result, it would still be possible to allot Channel 256A to Pawnee City as its first local service if this counterproposal is granted.

This site falls within Zone II, as defined by Section 73.205(c) of the FCC Rules. Accordingly, as outlined in Section 73.210(a) of the FCC Rules, the allotment of a Class C2 channel is permitted from these coordinates.

Table 1.0 is an FM allocation study for Channel 245C2 from the site described above. An examination of this table shows that operation on Channel 245C2 from this site would be short spaced to the conflicting proposals in this proceeding to allot Channel 245C2 to either Valley Falls, Kansas or Effingham, Kansas and to the sites specified in the construction permit (BNPH-20041230ADE) and the pending application (BMPH-20051206AGG) to modify the construction permit for a new FM station on Channel 244A in Humboldt, Nebraska.⁴

The short spacing to the conflicting proposals to allot Channel 245C2 to either Valley City, Kansas or Effingham, Kansas will not pose any problems since the proposal herein to allot Channel 245C2 to Holton, Kansas is timely filed as a counterproposal in this proceeding. The short spacing to Channel 244A to Humboldt, Nebraska can be eliminated by allotting another channel to Humboldt to replace Channel 244A as outlined below.

Table 1.1 is an FM spacing study for Channel 272A, which was conducted from the coordinates specified in the construction permit (BNPH-20041230ADE) for Channel 244A in Humboldt:

NL - 40° 15' 35"
WL - 95° 58' 17"

⁴Pursuant to the rounding provisions of Section 73.208(c)(8) of the FCC Rules, the 223.81 kilometer spacing to KZKX(FM) - Seward, Nebraska is considered to comply with the required spacing of 224 kilometers.

Similarly, Table 1.2 is an FM spacing study for Channel 272A, which was conducted from the coordinates specified in the pending application (BMPH-20051206AGG) to modify the construction permit for Channel 244A in Humboldt:

NL - 40° 03' 22"
WL - 95° 57' 26"

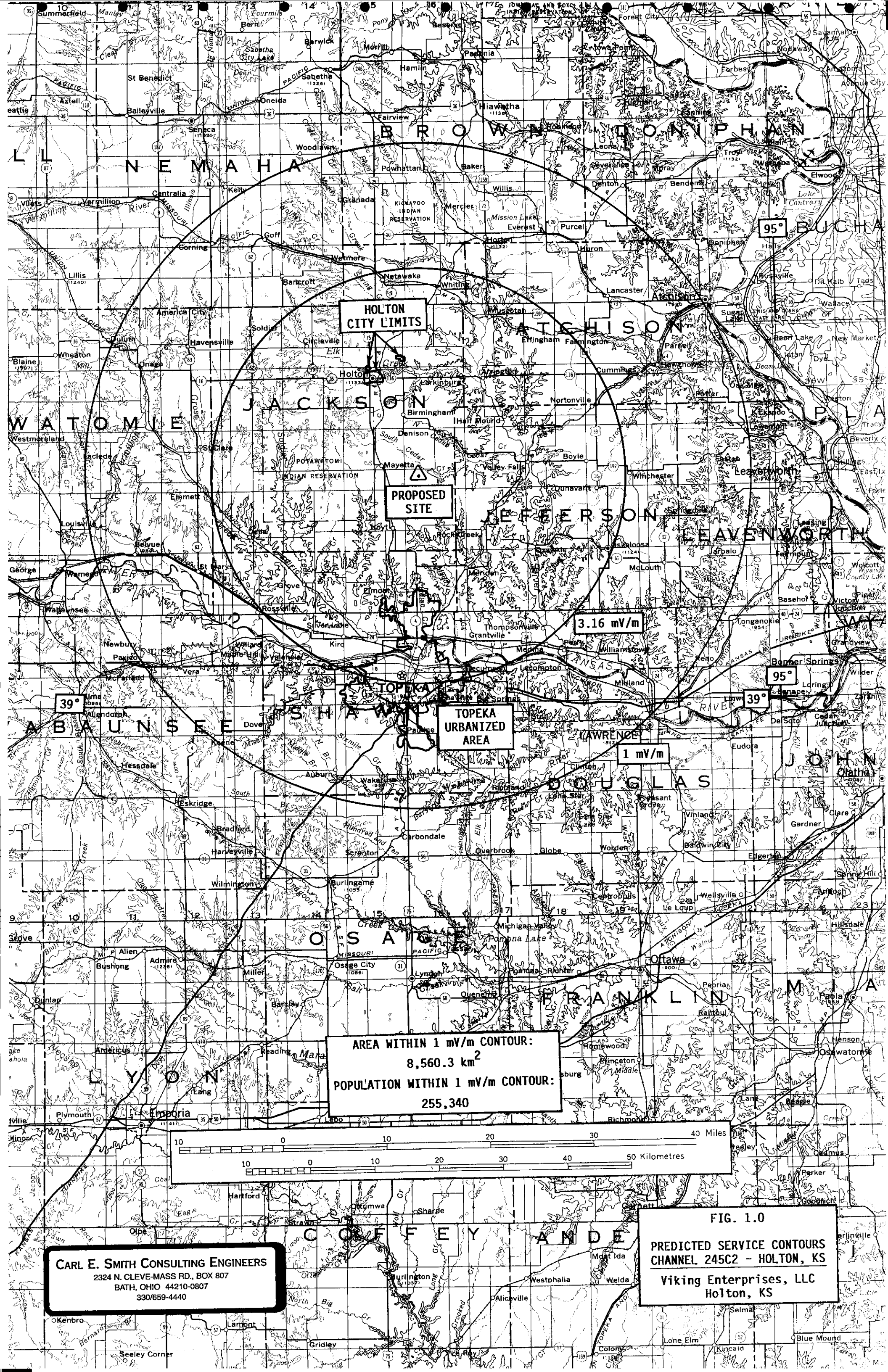
As shown in these tables, operation on Channel 272A from either of these sites would be short spaced only to the amended proposal in this proceeding which proposes to allot Channel 272A to Humboldt, Nebraska as a replacement for Channel 244A. These short spacings to the conflicting proposal to allot Channel 272A as a replacement service to Humboldt will not pose any problems since the proposal herein to substitute Channel 272A for Channel 244A in Humboldt is timely filed as a counterproposal in this proceeding.

Figure 1.0 is a map exhibit depicting the predicted 3.16 mV/m (city grade) and 1 mV/m (primary service) contours for the site specified above for Channel 245C2 in Holton. These contours were projected assuming maximum Class C2 facilities of 50 kilowatts effective radiated power at 150 meters above average terrain, assuming uniform terrain. As shown in this figure, it will easily be possible to provide city grade service to all of Holton on Channel 245C2 from this site. This figure also shows that the 1 mV/m contour for Channel 245C2 in Holton will encompass an area of 8560.3 square kilometers containing a population of 255,340 persons.⁵ The entire area within this 1 mV/m contour is well served, presently receiving five or more full time aural services.

⁵This map exhibit also shows that the predicted 3.16 mV/m contour for Channel 245C2 in Holton encompasses 57.9% of the Topeka urbanized area. As a result, since this exceeds the applicable 50% threshold, the *Counterproposal* which this engineering statement supports includes a *Tuck* showing to document that Holton is sufficiently independent of Topeka to justify receiving a first local service preference for the allotment proposed herein.

Studies were also conducted to determine the number of other stations providing aural service to Holton. Because the population of Holton exceeds 2500, these studies assumed that all AM stations provide service to their 2 mV/m daytime contours. These studies also assumed that all FM stations provide service to their 1 mV/m contours. All AM contours were projected using the notified facilities for each station from the FCC's Consolidated Database System and conductivity data extracted from FCC Figure M3. All FM contours were projected, based on the FCC criteria for allotment proceedings, assuming uniform terrain and that, except for Class C, Class C0, and Class A stations, all stations operate nondirectionally with the maximum facilities permitted for their class. Class A stations were assumed to operate with the greater of either their authorized operating facilities or the former Class A maximum facilities of 3 kilowatts effective radiated power at 100 meters above average terrain. Class C and Class C0 stations were assumed to operate with the greater of either their authorized operating facilities or the minimum permitted facilities for their class. Table 1.3 presents a tabulation of all other stations which presently provide aural service to Holton. As shown by this data, Holton presently receives aural service from 18 stations.

In summary, Channel 245C2 can be allotted to Holton, Kansas as its first local service with a site restriction 17.4 kilometers south-southeast of the community (rather than to either Valley Falls, Kansas or Effingham, Kansas), provided that Channel 272A is substituted for Channel 244A in Humboldt, Nebraska.



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TABLE 1.3

**STATIONS WHICH PROVIDE
AURAL SERVICE TO HOLTON**

Viking Enterprises, LLC
Holton, KS

<u>Station</u>	<u>Call</u>	<u>Frequency/ Channel</u>	<u>Location</u>
1	WIBW	580	Topeka, KS
2	KCSP	610	Kansas City, MO
3	KFEQ	680	Saint Joseph, MO
4	KCMO	710	Kansas City, MO
5	WHB	810	Kansas City, MO
6	KMAJ	1440	Topeka, KS
7	KTOP	1490	Topeka, KS
8	KJTY	201C2	Topeka, KS
9	KCVT	223C3	Silver Lake, KS
10	KAIR-FM	229C3	Horton, KS
11	WIBW-FM	233C0	Topeka, KS
12	KDVV	262C	Topeka, KS
13	KQTP	275C2	Saint Marys, KS
14	KNZA	280C2	Hiawatha, KS
15	KKJO-FM	288C1	Saint Joseph, MO
16	KLZR	290C1	Lawrence, KS
17	KTPK	295C	Topeka, KS
18	KMAJ-FM	299C	Topeka, KS

Exhibit B

[Locations](#) | [Interest](#) | [Indonesia](#) | [Smart Tips](#) | [Members](#) | [Arts & Crafts](#)


BALI & INDONESIA ON THE NET

Distance between **Holton, Kansas, United States** and **Topeka, Kansas, United States**, as the crow flies:

30 miles (48 km) (26 nautical miles)

Initial heading from Holton to Topeka:

south (176.0 degrees)

Initial heading from Topeka to Holton:

north (356.0 degrees)

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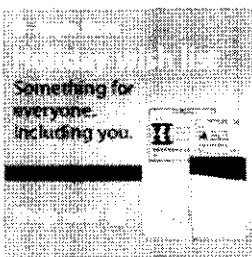
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See driving distance and directions (courtesy [Maps.com](#))



Holton, Kansas, US

County: **Jackson County**

Location: **39:28:14N 95:43:51W**

Population (1990): **3196**

Elevation: **1095 feet**

Topeka, Kansas, US

County: **Shawnee County**

Location: **39:02:16N 95:41:31W**

Population (1990): **119883**

Elevation: **1000 feet**

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Exhibit C



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